

110TH CONGRESS  
2D SESSION

# S. 1046

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## AN ACT

To modify pay provisions relating to certain senior-level positions in the Federal Government, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2   *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Senior Professional  
3 Performance Act of 2008”.

4 **SEC. 2. PAY PROVISIONS RELATING TO CERTAIN SENIOR-**  
5 **LEVEL POSITIONS.**

6       (a) LOCALITY PAY.—Section 5304 of title 5, United  
7 States Code, is amended—

8           (1) in subsection (g), by amending paragraph  
9       (2) to read as follows:

10           “(2) The applicable maximum under this sub-  
11 section shall be level III of the Executive Schedule  
12 for—

13           “(A) positions under subparagraphs (A)  
14 and (B) of subsection (h)(1); and

15           “(B) any positions under subsection  
16 (h)(1)(C) as the President may determine.”;  
17 and

18       (2) in subsection (h)—

19           (A) in paragraph (1)—

20           (i) by striking subparagraph (A);

21           (ii) in subparagraph (D)—

22           (I) in clause (v), by striking “or”  
23 at the end;

24           (II) in clause (vi), by striking the  
25 period at the end and inserting “; or”;  
26 and

1 (III) by adding at the end the  
2 following:

3 “(vii) a position to which section 5376  
4 applies (relating to certain senior-level and  
5 scientific and professional positions).”; and

6 (iii) by redesignating subparagraphs  
7 (B), (C), and (D) as subparagraphs (A),  
8 (B), and (C), respectively; and  
9 (B) in paragraph (2)(B)—

10 (i) in clause (i)—

11 (I) by striking “subparagraphs  
12 (A) through (C)” and inserting “sub-  
13 paragraphs (A) and (B)”; and

14 (II) by striking “or (vi)” and in-  
15 serting “(vi), or (vii)”; and

16 (ii) in clause (ii)—

17 (I) by striking “paragraph  
18 (1)(D)” and inserting “paragraph  
19 (1)(C)”; and

20 (II) by striking “or (vi)” and in-  
21 serting “(vi), or (vii)”.

22 (b) ACCESS TO HIGHER MAXIMUM RATE OF BASIC  
23 PAY.—Section 5376(b) of title 5, United States Code, is  
24 amended—

1           (1) in paragraph (1), by striking subparagraph  
2           (B) and inserting the following:

3                   “(B) subject to paragraph (3), not greater  
4           than the rate of basic pay payable for level III  
5           of the Executive Schedule.”; and

6           (2) by adding at the end the following:

7                   “(3) In the case of an agency which has a per-  
8           formance appraisal system which, as designed and  
9           applied, is certified under section 5307(d) as making  
10          meaningful distinctions based on relative perform-  
11          ance, paragraph (1)(B) shall apply as if the ref-  
12          erence to ‘level III’ were a reference to ‘level II’.

13                  “(4) No employee may suffer a reduction in pay  
14          by reason of transfer from an agency with an appli-  
15          cable maximum rate of pay prescribed under para-  
16          graph (3) to an agency with an applicable maximum  
17          rate of pay prescribed under paragraph (1)(B).”.

18          (c) AUTHORITY FOR EMPLOYMENT; APPOINTMENTS;  
19          CLASSIFICATION STANDARDS.—Title 5, United States  
20          Code is amended—

21                  (1) in section 3104(a), in the second sentence,  
22          by striking “prescribes” and inserting “prescribes  
23          and publishes in such form as the Director may de-  
24          termine”;

(2) in section 3324(a) by striking “the Office of Personnel Management” and inserting: “the Director of the Office of Personnel Management on the basis of qualification standards developed by the agency involved in accordance with criteria specified in regulations prescribed by the Director”;

(3) in section 3325—

(A) in subsection (a), in the second sentence, by striking “or its designee for this purpose” and inserting the following: “on the basis of standards developed by the agency involved in accordance with criteria specified in regulations prescribed by the Director of the Office of Personnel Management”; and

(B) by adding at the end the following:

“(c) The Director of the Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purpose of this section.”; and

(4) in section 5108(a)(2) by inserting “published by the Director of the Office of Personnel Management in such form as the Director may determine” after “and procedures”.

(d) EFFECTIVE DATE AND APPLICATION.—

(1) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of

1 the first pay period beginning on or after the 180th  
2 day following the date of enactment of this Act.

3 (2) NO REDUCTIONS IN RATES OF PAY.—

4 (A) IN GENERAL.—The amendments made  
5 by this section may not result, at the time such  
6 amendments take effect, in a reduction in the  
7 rate of basic pay for an individual holding a po-  
8 sition to which section 5376 of title 5, United  
9 States Code, applies.

10 (B) DETERMINATION OF RATE OF PAY.—

11 For the purposes of subparagraph (A), the rate  
12 of basic pay for an individual described in that  
13 subparagraph shall be deemed to be the rate of  
14 basic pay set for the individual under section  
15 5376 of title 5, United States Code, plus any  
16 applicable locality pay paid to that individual on  
17 the day before the effective date under para-  
18 graph (1), subject to regulations that the Direc-  
19 tor of the Office of Personnel Management may  
20 prescribe.

21 (3) REFERENCES TO MAXIMUM RATES.—Except  
22 as otherwise provided by law, any reference in a pro-  
23 vision of law to the maximum rate under section  
24 5376 of title 5, United States Code—

(A) as provided before the effective date of the amendments made by this section, shall be considered a reference to the rate of basic pay for level IV of the Executive Schedule; and

(B) as provided on or after the effective date of the amendments made by this section, shall be considered a reference to—

(i) the rate of basic pay for level III of the Executive Schedule; or

(ii) if the head of the agency responsible for administering the applicable pay system certifies that the employees are covered by a performance appraisal system meeting the certification criteria established by regulation under section 5307(d), level II of the Executive Schedule.

**SEC. 3. LIMITATIONS ON CERTAIN PAYMENTS.**

(a) IN GENERAL.—Section 5307(d) of title 5, United States Code, is amended—

(1) in paragraph (2), by striking all after “purposes of” and inserting: “applying the limitation in the calendar year involved, has a performance appraisal system certified under this subsection as making, in its design and application, meaningful distinctions based on relative performance.”; and

1 (2) in paragraph (3)(B)—

2 (A) by striking all beginning with “An”  
 3 through “2 calendar years” and inserting “The  
 4 certification of an agency performance appraisal  
 5 system under this subsection shall be for a pe-  
 6 riod not to exceed 24 months beginning on the  
 7 date of certification, unless extended by the Di-  
 8 rector of the Office of Personnel Management  
 9 for up to 6 additional months”; and

10 (B) by striking “, for purposes of either or  
 11 both of those years,”.

12 (b) EXTENSION OF CERTIFICATION.—

13 (1) EXTENSION TO 2009.—

14 (A) IN GENERAL.—For any certification of  
 15 a performance appraisal system under section  
 16 5307(d) of title 5, United States Code, in effect  
 17 on the date of enactment of this Act and sched-  
 18 uled to expire at the end of calendar year 2008,  
 19 the Director of the Office of Personnel Manage-  
 20 ment may provide that such a certification shall  
 21 be extended without requiring additional jus-  
 22 tification by the agency.

23 (B) LIMITATION.—The expiration of any  
 24 extension under this paragraph shall be not  
 25 later than the later of—



- 1 (i) June 30, 2009; or  
2 (ii) the first anniversary of the date of  
3 the certification.

4 (2) EXTENSION TO 2010.—

5 (A) IN GENERAL.—For any certification of  
6 a performance appraisal system under section  
7 5307(d) of title 5, United States Code, in effect  
8 on the date of enactment and scheduled to ex-  
9 pire at the end of calendar year 2009, the Di-  
10 rector of the Office of Personnel Management  
11 may provide that such a certification shall be  
12 extended without requiring additional justifica-  
13 tion by the agency.

14 (B) LIMITATION.—The expiration of any  
15 extension under this paragraph shall be not  
16 later than the later of—

- 17 (i) June 30, 2010; or  
18 (ii) the second anniversary of the date  
19 of the certification.

1       (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall take effect on the date of enactment of  
3 this Act.

Passed the Senate July 11, 2008.

Attest:

*Secretary.*



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